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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,504	09/11/2001	Marlo Wandel	3968.008	6088

7590

02/25/2004

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EXAMINER

WHITE, CARMEN D

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 02/25/2004

SW

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,504

Applicant(s)

WANDEL ET AL.

Examiner

Carmen D. White

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935.C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Abstract

Applicant has submitted an amended abstract in response to the indication in the prior office action of the incorrect format for the originally filed abstract. The examiner appreciates amendments to the abstract. However, a clean copy is needed that is 150 words or less and a single paragraph.

Claim Objections

Claims 10-25 are objected to because of the following informalities:

Lines 1-2 and 9-10 of claims 10-21 recite "the pattern", "the thoracolumbar part", "the spinal column", "the speed", "the direction", "the body measurement points", which lack proper antecedent basis.

Line 2 of claim 11 recites "the number of measurement value pick-ups", which lacks antecedent basis.

Lines 4-5 recite "the lumbar spinal "column" and "the thoracic spinal column", which lacks antecedent basis.

Lines 1-2, 5-6, 10-12, 15-16, 18 and 21-22 of claims 22-25 recite "the pattern", "the thoracolumbar part", "the spinal column", "the human body", "the speed", "the direction of movement", "the body measurement points", "the display device", "the form", "the quality", and "the experimentee", which lack proper antecedent basis.

Claim 23 recites "the number" in lines 1-2, which lacks proper antecedent basis.

Appropriate correction is required.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Moore** (EP 0 494 749 A1) in view of **Johnson** (5,638,300) or **Curchod** (5,791,351), further in view of **Linial** et al (4,665,928).

Regarding claims 10-21, Moore in view of Johnson or Curchod teaches all the limitations of the claims as discussed in the initial office action (paper #6, mailed July 3, 2003), which is incorporated herein by reference.

In response to the newly amended claim feature of "positioning a plurality of measurement value pick-ups that are mechanically independent of each other along the spinal column of a human body of an experimentee", Moore lacks the explicit disclosure of this particular feature. However, in the analogous golf swing analysis system, Johnson teaches the use of pick-ups that are mechanically independent of each other (Fig. 2), as also pointed out by Applicant in the response on page 11, lines 20-21. Further, in an analogous spinal motion sensing pick-up system, Linial teaches the use of pick-ups that are mechanically independent of each other (Fig. 1- #10l, #10k, #10n). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the pick-ups of Moore to include pick-ups that are mechanically

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independent of each other, as taught by Johnson or Linial in order to make it easier for the golfer to move around and swing; thereby improving the performance of the golfer. In response to the newly amended instant claim feature of "recording the measurement value pick-ups as recorded value measurement data", Moore also teaches this feature. Moore discloses the recording of the value measurement data from the pick-ups {transducers} into a computer, which analyzes this data (col. 6, lines 3-6 and col. 7, lines 1-26).

Regarding claims 22-25, Moore teaches all the limitations of the claims as discussed in the initial office action (paper #6, mailed July 3, 2003), which is incorporated herein by reference. In response to the newly added claim features of "positioning a plurality of measurement value pick-ups that are mechanically independent of each other on the human body", Johnson or Linial teaches this feature, as discussed in the above claim rejections (*see motivation for combination, above*). Further, Moore teaches the newly added claim feature of "the measurement value is displayed in the form of a measurement value curve" (Fig. 21). Also, Johnson or Curchod teaches the newly amended claim feature of "wherein the measurement value data is displayed in such a way that an observer can recognize the quality of the measured golf swing of the experimentee" (*see above, and initial office action for the disclosure of this claim feature in Johnson or Curchod and for the motivation for the combination with Moore*).

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Examiner's Response to Applicant's Remarks

Applicant argues that Moore and Curchod do not teach the newly amended claim feature of the measurement value pick-ups being mechanically independent of each other. The examiner has addressed this newly claimed feature, above, with the references of Johnson and Linial.

Applicant argues that Moore does not teach the comparison of different swings with each other. The examiner stated in the initial office action that this feature was not taught by Moore. However, Johnson or Curchod were combined with Moore, in a 103(a) rejection to disclose this instant claim feature. Further, Applicant argues that no comparison is performed between the stored swing and the current swing in Johnson. The examiner disagrees. Applicant's instant claims do not recite "how" or "what means" is used to compare the data. Therefore, the examiner asserts that in at least the most basic means of comparing the stored swing data, Johnson or Curchod teach that the comparison could be made by any observer viewing the stored and current swing data.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO Contact Information

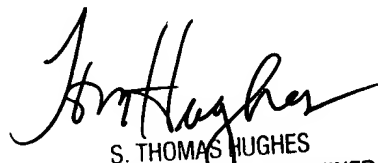
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carmen D. White whose telephone number is 703-308-5275. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



cdw



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